United Nations S/2011/705

Security Council

Distr.: General
11 November 2011

Original: English

Report of the Committee on the Admission of New Members concerning the application of Palestine for admission to membership in the United Nations

1. At its 6624th meeting, on 28 September 2011, the Security Council had before it the application of Palestine for admission to membership in the United Nations (S/2011/592). In accordance with rule 59 of the provisional rules of procedure and in the absence of a proposal to the contrary, the President of the Council (Lebanon) referred the application to the Committee on the Admission of New Members for examination and report.

2. At its 109th and 110th meetings, held on 30 September and 3 November 2011, respectively, the Committee considered the application.

3. Following the 109th meeting of the Committee, the Presidency of the Security Council for the month of October (Nigeria) convened five informal meetings of the Committee, four of which were held at the expert level, to carefully consider whether Palestine met the specific criteria for admission to membership contained in Article 4 of the Charter of the United Nations. Experts considered whether Palestine met the criteria for statehood, was a peace-loving State, and was willing and able to carry out the obligations contained in the Charter.

4. In the course of the meetings of the Committee, differing views were expressed. The view was expressed that the applicant fulfils all the criteria set out in the Charter. Questions were raised as to whether the applicant meets all of the Charter membership requirements. The view was also expressed that deliberations should take into account the broader political context of the matter at hand.

5. It was stated that the criteria set out in Article 4 of the Charter were the only factors that could be taken into consideration in the Committee's deliberations. In support of this position, reference was made to the Advisory Opinion of 28 May 1948 of the International Court of Justice, on the Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter).

6. It was also asserted that the Committee's work, whatever its outcome, should be mindful of the broader political context. The view was expressed that a two-State solution via a negotiated settlement remained the only option for a long-term sustainable peace and that final status issues had to be resolved through negotiations. Support was expressed for a two-State solution based on pre-1967 borders, resulting from political negotiations, leading to an independent State of

Please recycle

Palestine with East Jerusalem as its capital. It was stressed that Palestine's right to self-determination and recognition is not contrary to Israel's right to exist.

7. It was stated that the Committee's work should not harm the prospects of the resumption of peace talks, particularly in the light of the Quartet statement on 23 September 2011 that had set out a clear timetable for the resumption of negotiations. Similarly, it was stated that the prospect of negotiations should not delay the Security Council's consideration of Palestine's application. It was stated that Palestine's application was neither detrimental to the political process nor an alternative to negotiations. It was also stated that the Palestinian application would not bring the parties closer to peace. It was further stated that the question of the recognition of Palestinian statehood could not and should not be subject to the outcome of negotiations between the Palestinians and Israelis, and that, otherwise, Palestinian statehood would be made dependent on the approval of Israel, which would grant the occupying Power a right of veto over the right to self-determination of the Palestinian people, which has been recognized by the General Assembly as an inalienable right since 1974. Concerns were raised in relation to Israel's continued settlement activities. The view was expressed that those activities were considered illegal under international law and were an obstacle to a comprehensive peace.

8. In relation to the application of Palestine (S/2011/592), attention was drawn to the letter received by the Secretary-General from the President of Palestine on 23 September 2011, which contained a declaration — made in a formal instrument — stating that the State of Palestine was a peace-loving nation; that it accepted the obligations contained in the Charter of the United Nations; and that it solemnly undertook to fulfil them.

9. On the criterion of statehood, reference was made to the 1933 Montevideo Convention on the Rights and Duties of States, which declares that a State as a person of international law should possess a permanent population, a defined territory, a government and the capacity to enter into relations with other States.

10. With regard to the requirements of a permanent population and a defined territory, the view was expressed that Palestine fulfilled these criteria. It was stressed that the lack of precisely settled borders was not an obstacle to statehood.

11. Questions were raised, however, regarding Palestine's control over its territory, in view of the fact that Hamas was the de facto authority in the Gaza Strip. It was affirmed that the Israeli occupation was a factor preventing the Palestinian government from exercising full control over its territory. However, the view was expressed that occupation by a foreign Power did not imply that the sovereignty of an occupied territory was to be transferred to the occupying Power.

12. With regard to the requirement of a government, the view was expressed that Palestine fulfilled this criterion. However, it was stated that Hamas was in control of 40 per cent of the population of Palestine; therefore the Palestinian Authority could not be considered to have effective government control over the claimed territory. It was stressed that the Palestine Liberation Organization, and not Hamas, was the legitimate representative of the Palestinian people.

13. Reference was made to reports of the World Bank, the International Monetary Fund and the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians, which had concluded that Palestine's governmental functions were now sufficient for the functioning of a State.

14. With regard to the requirement that a State have the capacity to enter into relations with other States, the view was expressed that Palestine fulfilled this criterion. It was recalled that Palestine had been accepted into membership in the Non-Aligned Movement, the Organization of Islamic Cooperation, the Economic and Social Commission for Western Asia, the Group of 77 and the United Nations Educational, Scientific and Cultural Organization. In addition, over 130 States had recognized Palestine as an independent sovereign State. Questions were raised, however, regarding the authority of the Palestinian Authority to engage in relations with other States, since under the Oslo Accords the Palestinian Authority could not engage in foreign relations.

15. With regard to the requirement that an applicant be "peace-loving", the view was expressed that Palestine fulfilled this criterion in view of its commitment to the achievement of a just, lasting and comprehensive resolution of the Israeli-Palestinian conflict. It was further stated that Palestine's fulfilment of this criterion was also evident in its commitment to resuming negotiations on all final status issues on the basis of the internationally endorsed terms of reference, relevant United Nations resolutions, the Madrid principles, the Arab Peace Initiative and the Quartet road map.

16. Questions were raised as to whether Palestine was indeed a peace-loving State, since Hamas refused to renounce terrorism and violence, and had the stated aim of destroying Israel. Reference was made, on the other hand, to the Advisory Opinion of the International Court of Justice on Namibia, of 1971, which stated that the only acts that could be attributable to a State were those of the State's recognized authority.

17. With regard to the requirement that an applicant accept the obligations contained in the Charter and be able and willing to carry out those obligations, the view was expressed that Palestine fulfilled these criteria, as was evident, inter alia, from the solemn declaration to this effect contained in its application. It was recalled that in 1948, when considering the application of Israel for membership, it had been argued that Israel's solemn pledge to carry out its obligations under the Charter was sufficient to meet this criterion.

18. The view was also expressed that the Charter required more than a verbal commitment by an applicant to carry out its Charter obligations; an applicant had to show a commitment to the peaceful settlement of disputes and to refrain from the threat or the use of force in the conduct of its international relations. In this connection, it was stressed that Hamas had not accepted these obligations.

19. The view was expressed that the Committee should recommend to the Council that Palestine be admitted to membership in the United Nations. A different view was expressed that the membership application could not be supported at this time and an abstention was envisaged in the event of a vote. Yet another view expressed was that there were serious questions about the application, that the applicant did not meet the requirements for membership and that a favourable recommendation to the General Assembly would not be supported.

20. Further, it was suggested that, as an intermediate step, the General Assembly should adopt a resolution by which Palestine would be made an Observer State.

21. In summing up the debate at the 110th meeting of the Committee, the Chair stated that the Committee was unable to make a unanimous recommendation to the Security Council.

22. The Committee on the Admission of New Members concluded its consideration of the application of Palestine for admission to membership in the United Nations.

23. At its 111th meeting, the Committee approved the present report on its consideration of the application of Palestine for admission to membership in the United Nations.